

AUDIO TRANSCRIPTION

HEARING (EXCERPT)

SOCIAL SECURITY TRIBUNAL OF CANADA

GENERAL DIVISION, EMPLOYMENT INSURANCE SECTION

FILE NO. GE-22-2664

NOVEMBER 1, 2022

1 (AUDIO BEGINS)

2 (PORTION OF AUDIO OMITTED BY REQUEST)

3 Q MR. EDWARDS: All right. So the first
4 question I had was -- I was just wondering if you could
5 tell me a little bit about your job, what you were
6 doing.

7 A I -- I worked for Canadian Blood Service [sic], and I
8 actually -- obviously, as you probably know, Canadian
9 Blood Service provides blood for the whole nation of
10 Canada, and, plus, (INDISCERNIBLE) all kind
11 of (INDISCERNIBLE) across nations they share for this
12 specific kind of (INDISCERNIBLE) share.

13 Q M-hm.

14 A And that -- as -- as such, there is different
15 departments. But for the past ten years -- over ten
16 years and a half, I've been working at Canadian Blood
17 Service at Calgary location, specifically
18 donor testing. So what that means is it's literally --
19 right now -- actually, in 2019 on October, something
20 like that, they actually purchased a huge private
21 airport here in Calgary. Huge -- like, huge area. So,
22 like, it's very big. I don't know how to describe it.
23 It's a huge space. So it's a lab setting. So I
24 literally go to the lab. You know, you go to your
25 office. Mine is, like, a huge, huge, huge space. I've
26 given you guys the pictures where I work actually.

1 Q Right. Yeah.

2 A And I literally just go to my fridge, take out stuff,
3 test the blood. So there is no interaction with
4 outside public because that's not where donation is
5 happening. Donations are actually happening in
6 downtown in -- or mobile or other places. Where I
7 actually work, there is no donation. There is no
8 public coming to donate or want to donate.

9 Q Right.

10 A And also to give you, like, how -- what kind of area it
11 is -- because -- what else? So I literally just go
12 there, do maintenance of my instruments, clean up
13 my bench 'cause it's a lab. You always do that before
14 COVID 'cause it's a lab, right?

15 Q Right.

16 A You clean before and after. It's not COVID that
17 created this. You have to clean before and after.

18 Q Right.

19 A And set up my files, get my files, and work at them one
20 by one. That's just my day. That's -- do
21 maintenances, work on the files, investigate blood
22 works, and release results. That's what I do.

23 Q Okay. Right. Thank you.

24 A M-hm.

25 Q Okay. Then my next question is why were you -- why
26 were you let go from your job?

1 A That was a big surprise for me. Well, I was let go as
2 a party -- the vaccine mandate they put in, and --
3 which clearly states, at the (INDISCERNIBLE) of the
4 vaccine mandate -- you probably have it. I can
5 actually put it up. I can (INDISCERNIBLE) exactly
6 where -- just bear with me. Give me a sec.

7 Q No problem.

8 A So this vaccine mandate was let go sometime in
9 September, I believe. And this is -- the purpose of --
10 this says "COVID-19 vaccination policy". The purpose
11 is this: The purpose of this policy -- policy is
12 'cause you need to protect the health and safety of all
13 employees, donors, and volunteers from the spread of
14 COVID-19. So it says that: (as read)

15 To protect the health and safety of its
16 employees, all Canadian Blood Service
17 employees shall be required to be fully
18 vaccinated against COVID-19 subject to any
19 medical or other human rights grounds,
20 example, religious reason.

21 So (INDISCERNIBLE). That's great. At least they're
22 saying if you have religious reason or if you have
23 medical reason, they actually say, We will accommodate
24 you. We'll exempt you from that aspect. That's --
25 okay. So in all of this time, I was -- and they
26 already -- I'm just not, like, something -- used to

1 them, right?

2 Q Right.

3 A So -- and the -- the time came. They ask -- you have
4 to fill up the form. There's a website they created to
5 state what's your vaccination status, did you vaccinate
6 or not, and -- and do you plan. If you don't plan,
7 there's a process. I went through that process. That
8 was in September. And they told me, Okay. Great. You
9 are cleared for religious reason. They asked me two
10 questions. One of them is, like, Tell us what -- what
11 do you believe? What do you believe? What's your
12 religious conviction? And also they want us -- Give us
13 a letter from religious -- from a pastor or whatever
14 that you believe in.

15 Q Right.

16 A So great. I wrote my letter for them, and I got the
17 letter from my pastor, and I gave it to them. All this
18 time, like, I had no -- like, honestly, I -- I did
19 not -- no reason for me to believe this is going to be
20 denied. Like -- because they have clearly stated
21 because -- before (INDISCERNIBLE) the mandate, one
22 thing they have been assuring us 10,000 times from CEO
23 and everything during meeting and everything is, like,
24 We will exempt medical and religious ground. Like,
25 they have been saying that. So I have been at ease. I
26 have no reason for me to believe that I would -- and,

1 mind you, this is -- like, I've worked for them for
2 over ten-and-a-half years, and I'm one of their best
3 employee. Like, I have no reason for me to believe
4 this is going to happen to me. This whole thing is a
5 shock to me, just so you know.

6 Q Okay.

7 A And then -- then I gave it to them. I didn't
8 (INDISCERNIBLE). It was me 'cause I was being honest.
9 I gave them the whole information I have, and then we
10 went -- that was in September. Like, end of September,
11 I submitted my letter and the -- my pastor's letter,
12 and then sometime in October, early October, I think,
13 she -- one of the person, Shelain [phonetic], contacted
14 me in person for further clarification. Okay. I sat
15 with her for one hour to discuss about my letter. So
16 first she actually thought I -- Who wrote this for you?
17 I'm like, I wrote it, I told her. And
18 then (INDISCERNIBLE) ask me -- so she asked me what. I
19 gave them more verses, more explanations, giving from
20 my example. I literally poured out my life, explained
21 to her what my belief is, what my daily -- what I do to
22 have to -- through my convictions, how I live my life,
23 and when I was converted. I gave her all my
24 testimonies. It took -- took us about one hour. By
25 the end of that discussion -- this was the comment she
26 made. Okay? This is what she said at the end of it.

1 She said, I actually do believe you are true in your
2 conviction, and you are (INDISCERNIBLE). Like, I can
3 see you are authentic in what you are talking about
4 'cause -- I will tell you the truth. And she goes --
5 she took me back to my grandma's kitchen. She used
6 to say that word 'cause she used to be a devout
7 Christian, and she used to speak like this. So
8 every -- she's like, When I was talking to you, I was
9 reminded of being with my mother, my grandma's kitchen,
10 and my grandma talking to me. That's what I was
11 hearing. 'Cause I was talking to the word of God and
12 my life, right?

13 Q Right.

14 A That's the same thing.

15 So all this time, I'm telling you -- so everything
16 is going well. I (INDISCERNIBLE) again, I give her
17 another explanation. All this time, everything is
18 good. So I have no reason.

19 This is now -- now we're approaching October.
20 Finally, end of October, the letter came, and they told
21 me, Even though we don't -- well, she -- even as she
22 was saying, she's like -- she has to give it to me, and
23 she has to be there. She kept on saying
24 (INDISCERNIBLE) like, what she's saying, and -- it's,
25 like, two different people. And I'm confused,
26 honestly. Like, listening to her was confusing 'cause

1 it was a big conversation too, right?

2 Q Right.

3 A So she's saying -- she's apologetic. I'm like, I don't
4 understand why she's apologizing. I do not understand
5 because she's (INDISCERNIBLE) --

6 Q Right.

7 A -- (INDISCERNIBLE) than that, right?

8 Q Right.

9 A And then -- and her letter said -- she's like, I know.
10 I know this is true. You're true. And I honestly -- I
11 have interviewed so many people, and I can see you are
12 actually truly -- a true conviction. I believe
13 everything. But she goes -- and I'm like, What are you
14 talking about? So that was, like -- it was still,
15 like, a shock to me. Like, that (INDISCERNIBLE)
16 doesn't make sense to me.

17 Q Right.

18 A And then she did -- she said, Because of this -- and
19 she wrote this very rigid -- you have the letter,
20 the -- the conviction request denial letter.

21 Q Right.

22 A She wrote that to me, and she just read it out loud to
23 me, and I was completely confused, frankly speaking.
24 And I was still thinking, Okay. This is now -- I'm
25 going to go involve people, like, so they can make
26 change to this because I'm still not giving up at this

1 point. I was thinking, This -- like, obviously,
2 there's some -- like, God, right? Somebody has to make
3 sense of this. So I just tried to involve, trying to
4 make sense of it. This thing (INDISCERNIBLE) November,
5 December. I didn't apply for EI, frankly, that
6 December. Do you know why? Because I knew this is
7 going to work out. This doesn't make sense.

8 Q Right.

9 A Like, this -- I knew I was going to get my job back.
10 It never occurred to me I would really lose my job.
11 December something is when I applied for EI, simple as
12 that, because I did not, like -- anyway. This is --
13 that's -- that's how I got fired.

14 Q Okay. Thank you for all of that.

15 A Yeah.

16 Q And I think you actually -- your answer was very
17 detailed, and you covered a lot of the -- the questions
18 that I was going to ask, so I'm going to move past
19 those now 'cause I was -- I had wanted to talk to you
20 about your religious exemption request, and you've
21 covered a little bit of that.

22 Actually, maybe the one question I had about that
23 before we -- we move on is -- and you had sort of
24 already -- you had already mentioned that you -- after
25 you submitted the request, you met -- you met with them
26 or you talked to them a couple of times on the phone

1 before --

2 A She called me on the phone.

3 Q They called you on the phone?

4 A (INDISCERNIBLE - OVERLAPPING SPEAKERS) she called me --
5 she called me twice on the phone.

6 Q Okay.

7 A Yeah.

8 Q Okay. So they called you twice.

9 A Yeah.

10 Q And -- twice on the phone.

11 And how -- do you remember how long those
12 conversations were?

13 A Yeah. The first one was over one hour.

14 Q Okay.

15 A The first conversation. 'Cause she wanted to know in
16 detail what I believed, decide what I wrote for her, so
17 I was giving her, like, what I believed. She says --
18 like, I said -- you know what? I started from the
19 beginning. I believe, one, the Bible is actually
20 the authoritative ground that -- what rules over my
21 life --

22 Q Right.

23 A -- over everything I do, is gone from what? It comes
24 from the Bible.

25 Q Right.

26 A And I was telling her, like, we are created -- I

1 believe that God created the whole heaven and earth,
2 and I was telling her also that I am created in the
3 image of God, and I'm telling her -- it's from James'
4 (INDISCERNIBLE) 7. I'm giving you verses. And I also
5 told her that -- how my -- my basic belief is that
6 Genesis. Like, God say Adam and -- Adam and Eve were
7 created in his image, which is us, and they sinned, and
8 they -- when they sin -- that was in James' 3 -- but --
9 Chapter 3. He told them, You know what? You could
10 have left them. You could have said, You know what? I
11 don't (INDISCERNIBLE) go there. But he said, No. In
12 Genesis, he promised them that he will send -- there
13 will be a son that comes from the -- Eve that's going
14 to kill the serpent, and that's going to free us from
15 this sin and reunite us with him. But at this point,
16 they were separated from him. They used to be united
17 with him; they sinned; they got separated. But God
18 promised them that he will send, and that son is
19 actually Jesus Christ. His own son, he is sending for
20 us. So for the rest of us who believes in Christ --
21 whoever believes in Christ that Jesus is the son of
22 God, that he died for them, that he's resurrected, is
23 saved through him. So, like -- and that is what I
24 believe. And I -- and detailed information about how
25 my body is the Holy Spirit. Like, I gave her, like, so
26 many, so many verses, explained my life, how --

1 (INDISCERNIBLE) my life. Like, daily -- my daily
2 devotion with my kids, what I do, how I practice this,
3 like -- anyway. Yeah. In detail.

4 Q Yeah.

5 A Much better detail I would.

6 Q Okay. Okay. Yeah. Thanks for that.

7 And do you remember for the second call how long
8 that was?

9 A The second was very quick.

10 Q Okay.

11 A That was -- I was actually on the way to work.

12 Q Okay.

13 A If I have to guess, it's probably 10, 15 minutes.

14 Q Okay.

15 A It was very, very quick.

16 Q Okay. 10, 15 minutes. Okay.

17 A Yeah. I was just -- actually, I was going to work when
18 she called me, so it would have been 10 minutes
19 probably, so -- yeah. Something like that.

20 Q Okay. Okay. Great. All right. Thanks for that.

21 A M-hm.

22 Q Okay. And -- and actually -- yeah. I guess -- if you
23 wanted to turn to page GD3-63, and this is just -- this
24 relates to your employer -- the -- the refusal letter
25 they sent you for your exemption request. And -- so
26 let me -- let me know when you've got it up.

1 A GD -- give me a second. I --

2 Q Yeah. No rush. No rush. Take your time. Page 63 in
3 GD3.

4 A All right. 63. Okay. I think -- yes, I'm there.

5 Q Okay. And on that page, they -- they basically say
6 that because you don't interact with people daily at
7 your job -- or -- sorry. You say that you don't do
8 that, but they say that you do interact daily, which
9 means that even if they did find you had a religious
10 exemption -- a grounds for religious exemption, they
11 still have to refuse you. So I was just curious how
12 you would respond to that since you've already sort of
13 told me that you actually didn't interact with people
14 much. So I was just wondering if you could say a bit
15 more about that, please.

16 A I actually did put -- like, we had a really --
17 because (INDISCERNIBLE) was November, or end of
18 November, we had a meeting (INDISCERNIBLE) I told her,
19 So explain to me -- I told her, Do you even know where
20 I work? Because these people are, like, high corporate
21 people, right?

22 Q Right.

23 A They (INDISCERNIBLE) know where I am sitting in the
24 building. I told her, Have you even been in the
25 building I work? The Canadian Blood Services is big.
26 I do not work in the area. This --

1 Q Right.

2 A The -- they have just, like, general. You know how
3 on -- when you go to, for example, medical lab
4 technologies, medical lab systems, job description, it
5 is quite different. It is generic description of work.
6 But what do -- Rebecca does is not generically that.
7 It could be that, but it's not that. So what happened
8 is they just -- she just -- what do you call it? --
9 copy and paste that generic information, MLT -- if you
10 go Google, "What does MLT do?", you will get that kind
11 of information. Or Canadian Blood Services Calgary
12 generic -- because there's MLTs in different positions.
13 What do I do? I actually wrote down for them in a
14 point format what I work -- what do I -- actually, I
15 can find you that so that you have an idea what my day
16 is.

17 Q M-hm.

18 A And then I challenged her. I was telling her. So tell
19 me, I told her. One of the things she said was,
20 like -- on that point (INDISCERNIBLE) actually, let me
21 open -- I opened it and I closed it. Bear with me.
22 Okay. Okay. So, for example, she said -- where is it?
23 "In other words, you provided" ... Sorry. Would you
24 find me that part who said, procedure (INDISCERNIBLE)
25 starts -- starts with: (as read)

26 Procedures or programs in the face of

1 sincerely held [blah, blah] ...

2 Is that what yours starts with? 63 page for the
3 3D [sic]?

4 Q Yeah.

5 A Is that what it says? Okay.

6 Q Yeah.

7 A You are reading seventh paragraph? Is that what it is?

8 Q Yeah. Let me just go back to it. Sorry.

9 A Sorry. Yeah.

10 Q One second. Sorry.

11 Yeah. It's the bottom of the -- bottom of the
12 page. It's the -- the -- basically the last full
13 paragraph on page 63.

14 A Okay. Let's go down. Okay. Okay. (as read)

15 Even if CBS was satisfied that you did
16 have religious-based objection, we are not in
17 a position to accommodate your request after
18 (INDISCERNIBLE) position of employment for
19 the following reason. And then -- and you
20 are a (INDISCERNIBLE) MLT. You interact with
21 fellow employees daily basis, and your
22 unvaccinated status puts your fellow
23 employees and -- and yourself at risk. CBS
24 does not --

25 Okay. Great. So this is what I asked her. This is
26 what I told her. I -- in my department, actually,

1 people don't even know that I am there. The only
2 reason they know is because I send an email or
3 something like that. I could even be working there
4 forever. There are times where they will be like, Oh,
5 you are here? Because of my own huge -- I'll send you
6 guys a picture and video of my space, by the way. It's
7 big.

8 Q Right.

9 A It's manual working area, and there's only me in that
10 big, big -- like, huge space. Like, two, three
11 fridges, and all filing cabinets and big -- I'll send
12 you a video and picture of it.

13 So I ask her that day, Have you been in that room?
14 I told her. She goes, I -- I -- I have visited when it
15 was building. I have this test with her. That is
16 where I work by myself, I told her. Once -- once --
17 when COVID started -- when they started is, like, an
18 update once per day. They have an update so they --
19 they could stand up so that they know what happened.
20 'Cause COVID started -- they -- it was -- they were not
21 sure what (INDISCERNIBLE) what, and they wanted to make
22 sure they, like (INDISCERNIBLE) what's been done today,
23 right?

24 Q M-hm.

25 A So people give two minutes of (INDISCERNIBLE). For
26 example, (INDISCERNIBLE) this is what I was saying.

1 Today, I have, like, this day, seven files to work.
2 Two of them are about this (INDISCERNIBLE)
3 investigations, other is about (INDISCERNIBLE)
4 dealing -- it would probably take me a day. I will try
5 to finish this (INDISCERNIBLE) this. Everything is
6 good. That's -- long statement. Or I'm going to say,
7 I'm good. That's the statement I make. That's the
8 meeting (INDISCERNIBLE). That's about it.

9 Or there are times you can't even (INDISCERNIBLE)
10 meeting. Why? Because I'm in the middle of work. All
11 I'll say is I send out an email, or I (INDISCERNIBLE)
12 on a piece of paper and post it there. They will just
13 say, Oh, (INDISCERNIBLE) okay. That's it. I don't --
14 I don't need to be in a meeting. I don't need -- like,
15 (INDISCERNIBLE) this thing they're trying to say.
16 (INDISCERNIBLE) assuming, like (INDISCERNIBLE) oh, I
17 work next to somebody, then (INDISCERNIBLE) all the
18 time. That is not true. And that's what I was telling
19 her. And then you know what she told me? How
20 about when you walk (INDISCERNIBLE)? I told her, So
21 you're telling me the one minute it takes me to leave
22 this room and go through -- go outside is me causing --
23 infecting everybody; therefore, I need to lose my job?
24 Is that what your reason is? I told her. That's
25 (INDISCERNIBLE), I told her. Because when I told her,
26 she kept on -- she pushed and pushed. The point --

1 she's telling me, oh, (INDISCERNIBLE). I'm like, This
2 is where I want you guys to be reasonable, I told her.
3 This is where -- because you are actually making me
4 lose my job. This is my livelihood. This is my --
5 my -- what do you call it? -- I plan to retire here.
6 Like, I have --

7 Q Right.

8 A (INDISCERNIBLE) I have absolutely said that I have kids
9 right now. I do schooling with them. I have arranged
10 my work. I have become part-time so I can actually --
11 like, I have changed my life according to my work and
12 my lifestyle to do this. Now all of a sudden because
13 of one minute I can walk and I possibly meet somebody
14 in a way to go out of the building --

15 Q Yeah.

16 A -- and I'm going to lose my job? I told her, That's --
17 that's the reason why (INDISCERNIBLE)? And that is
18 where I -- I -- you guys have not been reasonable.
19 This is, like, beyond me, I was telling her. And so
20 this is by nature my work. I do not interact with
21 anybody. Like -- and the other (INDISCERNIBLE) I work
22 with, there's a huge -- I (INDISCERNIBLE) gave you a
23 picture of it. There's a -- big -- two new instrument,
24 huge, and I'm by myself working.

25 Q Right.

26 A So it's not like I work in cubicle. And this building

1 is big. It's, like, huge, huge, big, and very new.
2 Everything -- ventilation. Everything is, like, to
3 the highest level 'cause they just built it. The stake
4 is so high because they are trying to make it last for
5 long. Like, I don't know how to tell you how big and
6 how efficient everything between is. So none of this
7 makes sense. And my question to -- to you and to them
8 was, like, So hear me out. You wrote down -- they
9 wrote the mandate, right, for MLT. I was working --
10 this position did not get created after, like, the
11 mandate was written, the position to describe --
12 even -- let me tell you the way she -- she said it.
13 She said I do -- I'm surrounded with people, I
14 do everything, which I don't. Like, let her be.
15 Whatever position she's writing. This position, that's
16 the position I was in. So when they were writing the
17 mandate, they should have kept me in mind. Like, they
18 can't be writing this mandate without me being in mind,
19 this kind of MLT, and then come and tell me, Well,
20 because you are MLT during this, we -- we can't. Like,
21 the mandate says I work -- I was MLT for ten years. I
22 didn't become MLT after September after they wrote this
23 thing. I have been MLT with them doing the same job
24 they knew, so when they were writing, I was hoping I
25 was in their mind. I am hoping they were thinking of
26 my position. They were trying to protect

1 (INDISCERNIBLE) 'cause I was hoping I was part of their
2 protection plan.

3 Q Right.

4 A So -- and their protection plan just says, Based on
5 your religious or your medical, we will exempt you,
6 Rebecca, is how I take it. It doesn't tell me --
7 literally tell me, You are -- because you are MLT, I
8 can't (INDISCERNIBLE) you. But I have been MLT the
9 whole time. I have been through this job when you were
10 writing this, so I was hoping I was considered in that
11 letter. It's like -- I feel like I'm talking to two
12 different people.

13 Q Yeah.

14 A The people who (INDISCERNIBLE) was -- I was -- I was
15 not in there. The people who make the decision
16 (INDISCERNIBLE) you know, you can't (INDISCERNIBLE) but
17 I'm like, I am -- the other one was writing their own
18 mandate. They wrote down. See, they will accommodate
19 me. Great. I give them all they ask me and beyond
20 they ask me.

21 Q Right.

22 A And then they -- that's another thing I told them. I
23 told them, There isn't a single day, I told her, you
24 were trying to accommodate me, I told her. You know,
25 it is one thing to say -- you have called me multiple
26 times. I have sent you guys a picture. I have

1 (INDISCERNIBLE) everything. But there wasn't a single
2 day you guys were willing to say, Okay, what would it
3 be, accommodation? All they are trying to find is,
4 like, How could we -- she's unvaccinated. How could we
5 get it off her?

6 Q Yeah.

7 A There was not a single day as we were discussing --
8 even -- they were looking at, What would it be --
9 even -- let's say for the sake of conversation, you
10 know, What would it be to accommodate her? What would
11 it be? What would it take? What would it cost us?
12 Nobody discussed that. Every time they (INDISCERNIBLE)
13 figure out -- take time to figure out how not to say
14 "yes" to me. It was not, like, How can -- how can we
15 accommodate this person without affecting us? I -- and
16 I -- I told her that. And that is what -- you guys are
17 just, like, either vaccinated or out. And if that was
18 your kid, you should just write it out that way. Then
19 I could have looked for my job early on --

20 Q Right.

21 A -- in May, in August. If had you told me, You know
22 what -- when they were writing this and telling us, all
23 this meeting -- this was in August, this was in July,
24 when they were talking about this, and they're going to
25 be writing this. They were assuring us that before it
26 was written, they were announcing, discussing about

1 this, right? They were assuring us, If you have a
2 medical reason, if you have a religious reason, you are
3 okay. If they told me, No, I just want vaccinated
4 people or not, I could have looked for a job in July,
5 in August, and got me another place. (INDISCERNIBLE)
6 have been working (INDISCERNIBLE) by the
7 way (INDISCERNIBLE) they are already not working by
8 December. And (INDISCERNIBLE) much more. They are
9 dealing with patients. Like (INDISCERNIBLE) patient or
10 anybody, but I'd lose my job. But (INDISCERNIBLE)
11 nurses, MLTs, everybody, nobody lost their job.

12 Q Right.

13 A They're back. You know, like, I don't -- none of this
14 makes sense. For me, that's the confusing part. If I
15 had known this is going to -- all they had to do is,
16 like, write their policies, say, You know what? We
17 just want vaccinated or out. That is very clear. And
18 then I'll make my decision. Like, there's no -- like,
19 I have to make my decision, I'll make my decision, and
20 then move on with my life, you know? But they said,
21 No. If you're vaccinated, great. If you don't, we
22 have two accommodation ways, either medical and
23 religious. If you have, we'll accommodate you. They
24 assured me (INDISCERNIBLE) December, and that is
25 basically where I am at, and completely confused and
26 unfair. The whole thing is unfair. And I have no

1 issue with working. Like, I work. I don't have an
2 issue with working, and that -- this is so not right.

3 Q Right. Okay.

4 A Yeah.

5 Q Thank you for that.

6 And then the next question I had actually relates
7 to what you were just saying at the end there, which
8 is -- so after -- after they refused your exemption
9 request -- and you had hinted at this before too, that
10 you -- you thought -- like, you -- you continued to
11 think that they might change their mind or something
12 would happen that would allow you to keep your job, and
13 then you've -- you've just also said that they were
14 sort of assuring you or continuing to say that
15 something could be worked out? I -- I -- I just want
16 to clarify what -- what -- what happened basically
17 after your request was refused until they dismissed
18 you. What happened in that period?

19 A In that period, then I started to involve my union.

20 Q Okay.

21 A Because before that, I -- I was a union person, right?
22 But I never even involved union because this is, like,
23 religiously. I have nothing to hide. And they have
24 assured us, right? Like, this is -- this is -- this
25 (INDISCERNIBLE) September. No. They have assured us
26 it will be good, you guys are okay, and

1 that (INDISCERNIBLE) from CEO is coming down to us.
2 And we read -- we read it. Of course. It is okay.
3 Like, I have no reason to believe -- they said they
4 will accommodate. And I have -- I'm not -- I'm not
5 creating false -- I am telling my conviction, like, my
6 life. I'm telling what I believe. This is what I do.
7 I believe in Jesus Christ the lord, the king of king,
8 the lord of lord, creator of -- like, I'm -- this is my
9 life. This is the way I live. And I have shown them
10 how I live, how I do, and I have opened up and showed
11 them so that it would be easier for them to make a
12 decision. I shared all of these personal things so
13 that it will be easier for them to see so they wouldn't
14 have a shred of doubt what I believe.

15 Q Right.

16 A And what -- I'm not -- or -- making up anything. And
17 the truth is, they did believe that. They did. They
18 were saying, Yes, it is true. We can see your true
19 conviction. It is authentic. It is real. But they
20 just did want vaccinated people. That's what it was.
21 At the bottom of it, they just really wanted to be
22 vaccinated, and if you're not, out. But from the paper
23 and what they were saying, We will accommodate you. So
24 at the end -- because they couldn't. They keep on
25 trying to find something. They couldn't find against
26 my belief or what I stood, any fault. They couldn't

1 say, Oh, this is a lie. They never said, Well, you
2 not -- you didn't convince me. I have convinced them.
3 What else can I do? All I could tell them is, like, I
4 am a Christian. This is my life. That is what I
5 believe. And I convinced them, and they were
6 convinced. What else can I do? I don't know.

7 That's -- that's my part that doesn't make sense
8 to me. They know I'm a Christian. I have proved it to
9 them without a shred of a doubt without any --
10 unequivocally they believe that I am, but they just
11 didn't want it; therefore, they just say, Even if you
12 are, because -- that's why (INDISCERNIBLE). Because
13 they know they cannot deny I believe. So they say,
14 Even if you are, we are just going to say no to you.
15 That's where that came from. Because they cannot say,
16 We believe you, it's good, and then we can accept you.
17 They're trying to figure out how to say no to me
18 basically.

19 That's what this was about. This was not about
20 a -- a lack of accomodation. This was not about me
21 being infectious to them. I have worked with them --
22 before we moved 2019 October or end of October, we used
23 to live -- we used to be in a downtown office-style
24 building. That is like crunch. It's not a laboratory
25 area. That is where COVID started, and we have -- we
26 have to live with structural (INDISCERNIBLE). That was

1 a joke. The -- the joke -- it was -- they knew it was
2 a joke.

3 Q Yeah.

4 A And we knew it was a joke. There was no protection
5 because it's an office lab. It doesn't work. And with
6 COVID, it was, like, we were, like, pushing, but we
7 were okay apparently.

8 Q Right.

9 A I was okay during that time. But now we are in a
10 bigger space, ventilated. Everything is
11 (INDISCERNIBLE).

12 Q Right. Okay. All right. Okay. Thank you for all
13 that information. I -- I really appreciate you sharing
14 all of it with me. I think that's all the questions
15 that I have for you now, Ms. Abdo. Thank you again.

16 MR. EDWARDS: And I think at this point,
17 then, I'll turn it over to Mr. Kitchen, and -- and
18 we'll go from there. And so I'm going to mute myself
19 now, and if I -- if I need to come in for any reason, I
20 will unmute, but, otherwise, I am going to -- I am
21 going to stay on mute for this.

22 So go -- go ahead, Mr. Kitchen. Whenever you're
23 ready.

24 MR. KITCHEN: Thank you.

25 Mr. Kitchen Examines the Witness

26 Q MR. KITCHEN: Well, good morning, Rebecca.

1 A Good morning.

2 Q I'm going to read you a short verse, and then I'm going
3 to ask you a couple questions about it, and then I
4 think that's the only questions I'm going to have for
5 you.

6 A Okay.

7 Q I'm reading from James Chapter 4 Verse 17. You'll
8 recognize this.

9 A Okay.

10 Q James says: (as read)

11 Whoever knows the right thing to do and fails
12 to do it, for him, it is sin.

13 A Yeah. Yeah.

14 Q Now, let me ask you. Did you know that it was wrong to
15 take the COVID vaccine?

16 A Yes.

17 Q And did you believe that if you engaged in that wrong
18 and took the COVID vaccine that it would be a sin?

19 A Yes.

20 Q And if you took the vaccine even though you knew it was
21 wrong, would it violate your conscience?

22 A 100 percent.

23 Q And do you believe that not violating your conscience
24 is an important part of your Christian beliefs?

25 A 100 percent. That's all you have. Like, it's you and
26 your God and focus through -- through your spirit to

1 the word of God and through his spirit.

2 And -- just to give you a background, actually, I
3 used to be depressed, and this was in 2015. Like, full
4 depression. Like, I could not even open -- that's what
5 I got healed for. Part of my depression is actually me
6 sinning because not listening to the spirit, me
7 sinning, living a sinful life, (INDISCERNIBLE) right?
8 Sinful life, not listening to the conviction of God.
9 And when I tell you depression, I'll go to -- to work
10 crying 'cause I couldn't even contain. I wouldn't open
11 my window. I would be lying down in my bed. I don't
12 want the light. The only reason I would get up is
13 because I had to go to work. That was the position. I
14 was, like, thinking, What's the point of even living?
15 That was why I was -- depression, only a person who's
16 been depressed knows how hard it is. I don't -- I
17 don't wish it to even my enemy (INDISCERNIBLE)
18 depressed. That was my position I was in. And I
19 remember thinking -- I'm like, Is this all -- is this
20 all for me? I was thinking. And then the -- the --
21 spirit of God speaking, but the -- the part was -- was
22 revealed to me. I was living a sinful life. So
23 there's a conviction -- I -- I was sinning 'cause --
24 noticing the spirit of what the word of God said to me,
25 and so my -- my brain, my spirit, my conscience, and --
26 and turmoil, that is what God -- eventually once I

1 accepted the forgiveness of God and walked through his
2 word, 2017, I have become a born-again Christian. And
3 I have said, I won't sin. And I will not go against
4 what my spirit says to my conscience. I will not go.
5 Because if I go that, I will senile. That's the simple
6 word I have. I will literally go senile because this
7 is me. I have to live with myself, with my spirit, the
8 spirit of God in me, and I don't want to go sinner. I
9 have already been this close to go to sinner. I
10 remember lying down 2015 thinking, Life (INDISCERNIBLE)
11 because I was that much in a dark space. That was --
12 it's not a long time ago for me. I don't want to go
13 there.

14 Q And just to -- just to conclude on that, you felt like
15 the Lord was leading you --

16 A Yeah.

17 Q -- to not take this vaccine?

18 A 100 percent. With my conviction and my spirit, I could
19 not do it. And I could not -- I could not violate what
20 I believe. And trust me, I have bills to pay. We are
21 short. But I couldn't. I have kids.

22 Q Thank you. I -- I -- look, I appreciate the honesty.

23 All right. Those are my questions.

24 MR. KITCHEN: So, Mr. Edwards, I'm going
25 to -- I'm going to jump into my submissions.

26 Q MR. KITCHEN: Rebecca, did you -- did you

1 want to take a break, or are you okay with us
2 continuing to go on?

3 A It's okay.

4 MR. EDWARDS: Are you sure? 'Cause we
5 can -- we can definitely take a break. As I said,
6 anytime you need to -- to take a break, it's -- it's
7 totally fine.

8 A Yeah. It's okay (INDISCERNIBLE) my hard life
9 (INDISCERNIBLE).

10 MR. EDWARDS: Yeah. I understand. Of
11 course. I know this is hard. But if -- if you change
12 your mind and you decide that you want to take a break,
13 it's -- it's not a problem. As I said, it's -- it's
14 not a big deal at all. So just keep that in mind.
15 Okay?

16 A Okay.

17 MR. EDWARDS: Okay.

18 Submissions by Mr. Kitchen

19 MR. KITCHEN: Now, Mr. Edwards -- I'm going
20 to refer to you as Mr. Edwards. I'm not sure if
21 there's any sort of honorary title. I'm just going to
22 call you "My Lord", so ...

23 MR. EDWARDS: No, that's fine. It's all
24 (INDISCERNIBLE - OVERLAPPING SPEAKERS).

25 MR. KITCHEN: Well --

26 MR. EDWARDS: Thank you.

1 MR. KITCHEN: I have -- I have a number of
2 the documents I'm going to go through. I will try to
3 identify them according to the -- you know, the item
4 number and page number, but I'm also going to describe
5 them for the record as well. So I'm going to start
6 with the facts. I'm going to go over a little bit of
7 the law on -- on freedom of religion and religious
8 discrimination, religious accomodation, and then I'll
9 get into some targeted submissions on misconduct and
10 why Ms. Abdo did not engage in misconduct.

11 So to start off with, as far as the facts, we, of
12 course, have an employer policy of vaccination, COVID
13 vaccination policy. It's issued on September 1st.
14 It's revised on December 9, 2021. You have a copy of
15 that. It starts at GD3-52. I think it's four, five
16 pages long. And, of course, it states that: (as read)

17 All employees must show proof of COVID
18 vaccination by February 1st, 2022.

19 And as Ms. Abdo pointed out, the policy states, which
20 it's required by law to state, that the requirement to
21 receive the vaccine is subject to human rights
22 accommodation; human rights legislation, of course,
23 being quantity, constitutional, which means it's above
24 all legislation except the Constitution itself; and it
25 is applicable to all employers, private or public.
26 It's applicable in all circumstances. It is the

1 highest law in the land except for the Charter and the
2 Constitution.

3 And now, of course, this being a federal employer,
4 it's the Canadian human rights that's applicable, the
5 Canadian Human Rights Act. All the acts are the same.
6 They all contain protection for religious beliefs. So
7 on page 3, we have -- page 3 of the policy, we have a
8 reference to religious reasons/exemption. There's not
9 much here to go on. The policy simply says: (as read)

10 There are circumstances where employees
11 indicate that due to religious belief,
12 employees are unable to be fully vaccinated.

13 Which seems to be an indication that the employer does
14 understand its legal obligations to accommodate
15 employees who cannot do certain things for religious
16 reasons.

17 There's a reference in the next couple sentences
18 about potential third-party verification by the -- by
19 the employer to verify the authenticity. It's a bit of
20 a word salad there, but I think it's -- I think we
21 can -- it's safe to say that what the employer's
22 getting at is, you know, look, they want to make sure
23 that you're actually sincere in your belief. And, in
24 fact, that is the first part of the Amselem test for
25 establishing a protected religious belief. And how
26 that played out in this case, of course, is that

1 Ms. Abdo obtained a letter from Pastor Tim Stephens at
2 Fairview Baptist Church in Calgary that authenticated
3 her -- her beliefs about the COVID vaccine. The -- the
4 law does not actually entitle employers to demand that,
5 nor does it require employees to provide it, but that's
6 what happened in -- in -- in this case, and that
7 particular issue is kind of neither here nor there.

8 Now, of course, it's trite law that employers have
9 to accommodate up to the point of undue hardship. It's
10 also trite law that the employers are under the
11 obligation to establish undue hardship. If an employee
12 establishes a prima facie case of discrimination --
13 which is to say they establish that they have a
14 protected ground and that that protected ground was the
15 reason something happened to them, then they have
16 established a prima facie case -- the onus is on the
17 employer to establish undue hardship. So onus is on --
18 on -- on employee or claimant in this case to establish
19 the belief, but the onus is on the employer to
20 establish undue hardship.

21 Similarly, if the commission is going to sort of
22 uncritically adopt the position of the employer in this
23 case, as it -- as it has, the -- again, the -- the
24 obligation is on that party to establish that undue
25 hardship has been made out, and that's going to be
26 relevant as I get into my later submissions.

1 Now, as we go through the sequence of events, of
2 course, Ms. Abdo requests accommodation on the basis of
3 religious beliefs in late September. We have the
4 letter she wrote, we have the letter from
5 Pastor Stephens, and we have her testimony today, and
6 that provides a lot of content as far as her specific
7 beliefs. Of course, there's no -- I'm going to point
8 this out. There's no guidance from the employer on
9 what she was to submit, on what they expected to see.
10 They wanted to see the pastor's letter. We know that
11 from the interview she had. But there was really no
12 other guidance or criteria, which is a bit of a problem
13 because, of course, when you see -- when they deny,
14 they didn't give any reasons. They didn't -- they
15 didn't give -- they didn't provide Ms. Abdo any
16 rationale for understanding how she didn't meet any
17 criteria. In fact, there doesn't appear to be any
18 criteria. Now, the two --

19 A Sorry, Mr. Kitchen. Can I interrupt?

20 MR. KITCHEN: Yeah.

21 A Okay. The only thing they gave me -- once I told them
22 that I am not vaccinated, the only thing I had was they
23 asked me to -- to tell them what -- what my belief is.
24 (INDISCERNIBLE) state what your faith is, what your
25 convictions are, and get approved therefrom your faith
26 leader. That's (INDISCERNIBLE) they asked me, and I

1 gave it to them, and I thought that was simple, like --
2 and that was the easiest thing for me to do 'cause I
3 just had to sit down and write it down. That's all I
4 did, and I gave it to them.

5 MR. KITCHEN: Yes. And you did -- you did a
6 good job.

7 So, Mr. Edwards, I want to draw you to the fact
8 that when it comes to the law of religious
9 discrimination or religious freedom or establishing a
10 protected religious belief, of course, you know, the
11 claimant has to do more than simply say, I believe in
12 Jesus, so I can't do this, right? And -- but that gets
13 complicated, and I think that's part of what happened
14 here.

15 Obviously, Ms. Abdo spent a lot of time both in
16 her written material and -- and today in her oral
17 materials talking about her general faith in Jesus, and
18 that's not enough. But she did more than that. She
19 specifically cited two doctrines that apply to the
20 issue of COVID vaccination. Okay? You see this in her
21 written materials. The first one is the doctrine of
22 Christians being the temples of the Holy Spirit. Their
23 bodies are the temple of the Holy Spirit. Okay? Which
24 is the third person of the Holy Trinity, right? We
25 have Jesus, the son of God; we have God, the father; we
26 have -- we have the Holy Spirit. That's the Holy

1 Trinity. The Christians believe in this.

2 And what Christians do with their bodies are
3 pretty important to Christians, which isn't surprising.
4 It's pretty important to Jews and Muslims. It's
5 typically an important part of -- of any major
6 religion. You know, don't eat this, don't wear this,
7 don't do this, don't -- don't -- you know, don't have
8 sexual relations with this, whatever. All these things
9 are pretty important.

10 So Christians believe that, of course, their
11 body's (INDISCERNIBLE) of Christ, that Christ is the
12 blood of Christ, and that they're actually not their
13 own. They are bond servants of Christ, and so their
14 bodies are subject to the will of Christ. And, you
15 know, these things sound pretty weird to secular
16 people, but, you know, they're -- they're
17 2,000-year-old standard Christian doctrines. There's
18 nothing unusual about this.

19 In the case I'm going to bring you to, we were
20 talking about a -- a largely unpracticed Jewish belief
21 of living in a hut for eight days to celebrate the
22 Festival of Booths. In this case, we're talking about
23 a Christian doctrine that is not obscure like that one.
24 It's really a fundamental one. This is the reason why
25 Christians generally don't believe in taking hard jobs
26 or getting really drunk or extramarital sex or all

1 kinds of those immoral things. Presumably they're
2 immoral. They don't engage in. And that's -- that --
3 a lot of that is going back to what the apostle talked
4 about in Romans when he says, you know, Your body is
5 the temple of the Holy Spirit. Don't engage in these
6 things. So we -- we see that.

7 So as far as, you know, can somebody say that
8 there's no specific belief, and so the test has been
9 made out, or can somebody say the belief is very
10 personal? No. You -- you really can't -- you can't
11 credibly begin to make that argument when you actually
12 look up what the law of religious discrimination is.

13 But there's a second issue, and that one -- that
14 one, I know, didn't come out very well in Ms. Abdo's
15 written materials, but we know from her testimony that
16 it came out well when she was talking to her employer,
17 and it came out just now before you. And that's her
18 belief about conscience. And this is where we get a
19 lot of the -- a lot of the misplaced accusations of
20 personal beliefs, is the -- the idea of conscience is
21 very important to Christians, right? This is why in
22 the holy scriptures -- which is -- which is the holy
23 book for Christianity; this is -- this is the
24 religiously authoritative text, right? The book of
25 James is part of that.

26 James, the brother of Christ, says, Look, if you

1 know something is wrong, for you, it's a sin to do.
2 Well, why -- why can he so confidently say such an
3 absolute statement? Because Christians believe that,
4 look, if your conscience is telling you something, it's
5 'cause the Holy Spirit is informing that conscience,
6 right? If you're a true believer; you have the Holy
7 Spirit living inside you; the Holy Spirit convicts you;
8 it tells you the truth of things, right? Lots of
9 scripture on this. So Christians believe that, look,
10 if my conscience tells me something is wrong, then I'm
11 going to go with that 'cause I know my conscience is
12 informed by the Holy Spirit, and I know that it's not
13 merely wrong; it is -- it is a sin. Okay?

14 So for Ms. Abdo, she -- she has not merely the --
15 the -- the belief about the issue with -- with her body
16 and her body being the temple and not putting any
17 dangerous substances in it. She -- she knows because
18 her -- her conscience has told her, which is the same
19 as -- as hearing from the Lord himself, that she can't
20 do this, and to do so would be a sin. And,
21 obviously -- I mean, I don't think I have to explain
22 that if you're -- if you're making a Jew or a Muslim or
23 a Christian engage in sin, it's a big deal. Okay?

24 You know, we -- the -- the -- the test I'm going
25 to bring you through talks about interference with the
26 religious beliefs that is more than trivial or

1 insubstantial. Well, you know, to make a Muslim eat
2 pork or, you know, to -- to -- to make a Jew, you know,
3 do things with -- with -- with women in the room or to
4 not wear their -- their head covering, these are sins.
5 And they sound foolish to secular-minded people. Of
6 course they do. But they are sins. And -- and -- and,
7 obviously, a sin is not something that's trivial or
8 insubstantial. It certainly isn't to the person who
9 experiences it. Okay? It causes intense emotional and
10 spiritual distress. I don't think you need to be a
11 religious person to understand that. If you think
12 you've -- you've sinned against the god that you say
13 you believed in, it's a big deal. It's more than
14 trivial interference.

15 Now, we, obviously, need to deal with the elephant
16 in the room, and, you know, that's -- that's the issue
17 of the effectiveness and the supposed safety of the
18 vaccine. Now, that's not really the -- the -- the
19 actual core issue as far as what the Tribunal needs to
20 find, right? The Tribunal is very limited in -- in --
21 in jurisdiction, as I'm sure you know. I'm going to
22 get into that later.

23 But we need to be careful how we dance around that
24 elephant in the room, right? We can't simply -- the
25 Tribunal can't simply blindly adopt government
26 propaganda or -- or employer messaging about the safety

1 and efficacy of the vaccines. I think we know that the
2 vaccines are potentially not safe and potentially not
3 efficacious. We have our head in the sand if we can't
4 acknowledge that there's at least a controversy about
5 that.

6 The reason that's relevant is the Tribunal, like
7 any court or decisionmaker, cannot take notice of
8 something, cannot assume something, cannot say that
9 something is true unless they have evidence to show it,
10 right? So there is a lack of evidence that the
11 vaccines are safe. There's potentially a lack of
12 evidence they are completely dangerous too. What I'm
13 saying is that there's a lack of evidence it's one or
14 the other, right? The only appropriate position of
15 any adjudicative body to take is to say, We don't know
16 if it's safe or not 'cause there's lots of indication
17 it isn't even though there's lots of messaging it is.
18 And we also don't know if it's efficacious because we
19 know there's lots of messaging it is, but we all have
20 eyes and ears and mouths, and we can look around us in
21 the last year to see that the vaccines didn't do a good
22 job of preventing infection and transmission. So we're
23 just not going to make any findings on that absent the
24 expert evidence required to do so.

25 So I'm not going to ask you to make any findings
26 it's not -- that it is dangerous or that it -- that

1 it -- that it doesn't work, but I'm going to ask you to
2 follow the law and not make findings that it is safe or
3 that it is efficacious because at this point all that
4 the Tribunal has that it can properly rely on is that
5 it's -- it's -- it's neither. Okay?

6 So the reason that's relevant is everybody's going
7 to want to say to all the crazy Christians that won't
8 take the vaccine and talk about how dangerous it is and
9 how they have to protect their temple -- their body,
10 which is the temple of the Holy Spirit as well, is it's
11 safe. Well, I mean, you know, if somebody believes
12 this, they're not -- it's not -- it's not a crazy
13 belief. It's not a belief that -- that -- that is
14 devoid of -- of facts. Okay? There's enough out there
15 about the spike protein to know that it's potentially
16 dangerous. So if someone says, Look, my body is the
17 temple of the Holy Spirit. I'm not even going to take
18 any risks of putting something dangerous into it, then
19 that belief is not something to be summarily dismissed
20 or shrugged aside. It's -- it's a belief to be
21 respected. It's a protected belief, right? We're not
22 talking about a glass of lemonade. Okay? Right?
23 We're not talking about a glass of coffee. For a
24 hundred years, we (INDISCERNIBLE) whether coffee is
25 safe or not. That's not what we're talking about.
26 We're talking about something that is potentially

1 dangerous, and if someone says, Look, I take care of my
2 body so severely that I don't even take, you know,
3 risks with it, then that -- that's -- that's a belief
4 that can't just be summarily dismissed as
5 being completely irrational 'cause the thing in
6 question is completely safe. Why don't you drink the
7 lemonade? That's not what we're talking about. So
8 that's why I bring all this -- all this up.

9 And, of course, I just remind the Tribunal if
10 there's -- if there's, you know, lingering questions
11 about, Well, shouldn't we just assume everything the
12 government says is -- is -- is truthful and accurate, I
13 can give you several examples, but I think -- I think
14 the most relevant one, and not to waste time on this,
15 is formaldehyde. The government says it's safe; we now
16 know it's not. Sometimes governments lie. Sometimes
17 governments are wrong. They're not perfect. The
18 courts repeatedly recognize this. Justice Pazaratz a
19 few months ago, the Ontario Superior -- Superior
20 Court Appeal -- or the Superior Court of Justice
21 recognizes this very obvious, although uncomfortable,
22 fact.

23 So there's two relevant beliefs established by
24 Ms. Abdo. She can't put something potentially
25 dangerous in her body because her body is not owned by
26 her; it belongs to Christ. Second of all, she cannot

1 violate her conscience because her conscience is
2 informed by the Holy Spirit. She believes that it was
3 a sin to take the vaccine, that the Lord was leading
4 her -- leading her not to, and that if she did, it
5 would be a sin. Okay? I understand this is
6 confounding for secular people; it's probably
7 confounding to her -- to her employer.

8 But -- but the test isn't, Do we agree with your
9 religion, do we understand your religion? That isn't
10 the test. I'm going to walk you through a little bit
11 of the -- a bit of the Amselem test for religious
12 discrimination. Because we're not going to get into
13 whether or not the employer is justified or acting
14 reasonably or their policy is reasonable. That's not
15 for the Tribunal to decide. Okay? But Ms. Abdo is not
16 submitting that the employer acted unreasonably or that
17 it was unjustified. What she's submitting is that the
18 employer acted unlawfully, and that's a -- and there's
19 a difference there, and I'm going to take you to the
20 case that talks about that. But I want to go through
21 the Amselem test first.

22 So as -- as is common amongst employers -- I'm
23 sure you've encountered this -- often the excuse for
24 not accommodating Christians who say, We don't want to
25 be vaccinated, is -- is -- is a rather bizarre
26 accusation that the belief is merely personal. It's

1 somehow not protected in law even though it is a
2 religious belief because it's personal. Of course,
3 there's -- there's no law that says that. This is a
4 complete fantasy. It's a complete fiction. But it's a
5 very popular one. This is a very effective one as far
6 as coming up with excuses to violate people's rights.
7 And almost as if the Supreme Court of Canada predicted
8 this 18 years ago in the Amselem case. The neutral
9 citation for that is 2004 SCC 47. It's Amselem
10 Northcrest -- or -- sorry -- Syndicat Northcrest and
11 Amselem. I'm just going to take you to -- I'm going to
12 read you some paragraphs.

13 Paragraph 42 of the Supreme Court says, "This
14 understanding" -- and above that it's talking about
15 religious beliefs: (as read)

16 This understanding is consistent with a
17 personal or subjective conception of -- of
18 religion, one that is intricately linked with
19 an individual's self-definition and
20 fulfillment and is a function of personal
21 autonomy and choice, elements which undergird
22 the right.

23 Going down to paragraph 43: (as read)

24 The emphasis, then, is on personal choice of
25 religious beliefs. In my opinion -- [this is
26 Justice Dickson speaking]. In my --

1 Sorry. No. Not Justice Dickson (INDISCERNIBLE). In
2 any event, I'll -- I'll -- I'll restart that:
3 (as read)

4 The emphasis, then, is on personal choice of
5 religious beliefs. In my opinion, these
6 decisions and commentary should not be
7 construed to imply that freedom of religion
8 protects only those aspects of religious
9 belief for conduct that are objectively
10 recognized by religious experts as being
11 obligatory tenants or precepts of a
12 particular religion. Consequently, claimants
13 seeking to invoke freedom of religion should
14 not need to prove the objective validity of
15 their beliefs and that their beliefs are
16 objectively recognized as valid by other
17 members of the same religion nor such an
18 inquiry appropriate for courts to make.

19 Which you often see. And I have no doubts that you've
20 seen it, Mr. Edwards, and you're seeing it in this
21 case, is employers or anybody that is denying
22 accommodation, they invariably say, Look, Christianity
23 doesn't say that you can't take vaccines. Christianity
24 doesn't even say you can't take COVID vaccines. So if
25 Christianity doesn't say according to us, well, then
26 we're not going to accommodate. I'm sorry. That's not

1 the law. The law is very clear that that's exactly the
2 opposite of what you should be doing. That's -- that's
3 exactly contrary to what you should be doing.

4 And, I mean, you can -- you can understand this,
5 right? The right becomes meaningless, it becomes
6 hollow, if the only way you can have protection for
7 your religious belief is if some religious authority
8 authenticates it or if some majority agrees with it.
9 Well, then it is no longer an individual right. Now
10 it's some sort of weird collective right that you
11 can't -- that can't be exercised unless you're part of
12 the collective. Courts aren't that stupid. They can
13 figure that out. They saw this coming. Okay? They
14 said, Look, if this is going to be an individual right,
15 which it is, then there has to be protection for
16 individuals who subscribe to minority or dissident
17 beliefs within the religion itself, within the system
18 of beliefs; otherwise, only the Jews who don't live in
19 a hut for eight days of the year have protection for
20 their beliefs. What about the Jews that do?

21 Going down to paragraph 46: (as read)
22 Freedom of religion consists of the freedom
23 to undertake practices and harbour beliefs,
24 having a nexus with religion, in which an
25 individual demonstrates he or she sincerely
26 believes or is sincerely undertaking in -- in

1 order to connect with the divine or as a
2 function of his or her spiritual faith,
3 irrespective of whether a particular practice
4 or belief is required by official religious
5 dogma or is in conformity with the position
6 of religious officials.

7 You can't be more clear.

8 Going down to paragraph 47: (as read)

9 Both obligatory as well as voluntarily
10 expressions of faith should be protected
11 under the Quebec and Canadian Charter.

12 And I'll just stop right there to point out the fact
13 that this is the law in a human rights context. Human
14 rights tribunals will regularly apply this. This is --
15 this is the test across the board, whether somebody is
16 claiming Section 2(a) of the Charter or they're
17 claiming religious discrimination.

18 'Cause the -- the question is, We -- well, we
19 can't establish discrimination. We can't figure out if
20 there's discrimination unless there's actually a
21 protected religious belief. How do we figure that out?
22 We go to the Amselem test to see if there's a protected
23 religious belief, right? You know, well, you believe
24 in the Flying Spaghetti Monster, so you say you can't
25 work at that machine, well, you know, we'd have a legal
26 test to figure out if that's valid, right? And, you

1 know, lo and behold, no, you don't get to just say you
2 believe in the Flying Spaghetti Monster and avoid doing
3 work. That's kind of the whole purpose of this test,
4 is to avoid those types of scenarios. (as read)

5 It is the religious or spiritual essence of
6 an action, not any mandatory or
7 perceived-as-mandatory nature of its
8 observance, that attracts protection. An
9 inquiry into the mandatory nature of an
10 alleged religious practice is not only
11 inappropriate; it is pled with difficulties.

12 Going to paragraph 48: (as read)

13 This is central to this understanding of
14 religious freedom that a claimant need not
15 show some sort of objective religious
16 obligation, requirement, or precept to invoke
17 freedom of religion. Such an approach would
18 be inconsistent with the underlying purposes
19 and principles of the freedom emphasizing
20 personal choice as set out by Justice Dickson
21 in Big M Drug Mart.

22 That's why I got confused a bit earlier. That's a
23 reference to a 1995 case, sort of the seminal case for
24 freedom of religion in the country. (as read)

25 To require a person to prove this, to prove
26 that his or her religious practices are

1 supported by mandatory doctrine of faith,
2 leaving it for judges to determine what those
3 mandatory doctrines of faith are, would
4 require courts to interfere with profoundly
5 personal beliefs in a manner inconsistent
6 with the principles set out by
7 Justice Dickson.

8 I know that's a lot, but that's the law, and apparently
9 everybody's forgotten it, so we're going to have to go
10 back to basics here.

11 When an employer denies accommodation by merely
12 arbitrarily identifying it as -- as personal, okay,
13 we're not talking about a -- you know, a case that's on
14 the line. We're not talking about a case of, well, we
15 don't know if it's just discrimination. We're talking
16 about an employer acting unlawfully very obviously.
17 Okay?

18 I'm going to take you to the -- the October 22nd
19 letter from the employer. This is -- I'm starting at
20 GD3-62. This is a letter from the employer denying
21 accommodation. I'm on page 2 of that letter. I'm at
22 the second line of that second paragraph, and the
23 letter says: (as read)

24 We are not disputing your individual
25 religious beliefs are strong.

26 Okay. So two things there, right? The employer is --

1 is conceding sincerity. Okay? And they're conceding
2 that the beliefs are religious. Okay? (as read)

3 However, we have concluded that the reason
4 for your refusal to be vaccinated is due to a
5 personal belief and not a belief imposed by
6 your religion.

7 Completely contrary to everything I just told you from
8 the Supreme Court of Canada. The Supreme Court of
9 Canada says, You can't do that. That's not lawful. In
10 fact, it doesn't matter to this person. Of course
11 every religious belief is an individual. The
12 Supreme Court of Canada just said that. That doesn't
13 make it not religious. It is religious as the employer
14 just acknowledged in the sentence before, right?

15 We -- we -- we see this dissonance, this cognitive
16 dissonance here in the letter, but we also see it in --
17 in Ms. Abdo's testimony, right? The person she's
18 talking to is saying, Look, I know you're sincere. I
19 know you're a Christian, but -- but I have to do this.
20 But this is the policy. But we don't care about the
21 law. We're not going to follow the law. We're going
22 to discriminate against you. We don't care about
23 Amselem. We don't care what the Supreme Court of
24 Canada says. We don't care what the human rights
25 tribunal says. This is it. 100 percent. We're forced
26 vaccination. That's it. I think -- I think Ms. Abdo

1 really said it quite eloquently when she said, you
2 know, they were finding a reason to get rid of her. We
3 see this all across the country. It's not just
4 Ms. Abdo.

5 So we have an unlawful excuse for denying
6 accommodation. And then we have, going down further on
7 that same page: (as read)

8 We enforce that even if CBS was satisfied
9 that you did have a valid religious-based
10 objection, we are not in a position to
11 accommodate your request as it relates to
12 your position of employment.

13 Right. Except that they said they would in their
14 policy. Let's go right back to the policy statement
15 that Ms. Abdo read for you, GD3-52: (as read)

16 To protect the health and safety of its
17 employees, all Canadian Blood Services
18 employees and contractors (INDISCERNIBLE) are
19 required to be fully vaccinated against
20 COVID-19 subject to any medical or other
21 human rights grounds.

22 "Subject to." Well, of course, subject to. That's the
23 law. The policy has to say that. It's the law. If
24 the policy didn't say that, it would still have to do
25 that 'cause that's the law.

26 Basically what -- what -- what Canadian Blood

1 Services is saying is, Look, even if we followed the
2 law and actually admitted you have a protected
3 religious belief, we still wouldn't follow the law and
4 accommodate you because we don't want to. Again,
5 the -- and going back to what I said, the onus is on
6 the employer to establish that there's undue hardship.
7 Okay? So because -- because you can't make a finding
8 whether or not the vaccine is dangerous or is not or is
9 efficacious or is not. Let's just put that aside.
10 Okay? You -- you can make a couple findings, though.
11 Okay? As a matter of logic, if the vaccine is
12 efficacious, Ms. Abdo poses no threat to anybody.
13 Okay? She doesn't pose a threat to vaccinated
14 employees. They're safe. They're immunized. The
15 vaccine works. They're not going to get it from an
16 unvaccinated employee. She doesn't even pose a threat
17 to any unvaccinated other individuals. You know why?
18 There's a thing called herd immunity. The vaccine's
19 effective, and all you need is about 80, 85 percent of
20 the population to have it, and all the unvaccinated
21 people are protected by the vaccinated people that are
22 vaccinated with an effective vaccine because it's
23 sterilizing, and it prevents -- it prevents the
24 infection from being transmitted. Okay? So any --
25 there's no talk here about immunocompromised people or
26 anything like that, but even if any of that was

1 hypothetically there, even if we had this hypothetical
2 group of people that cannot be vaccinated somehow,
3 Ms. Abdo's no threat to them. She's no threat to the
4 vaccinated people. This is a matter of logic. This is
5 a matter of scientific fact. Okay? Pursuant to --
6 to -- to whether this vaccine's effective or not. Put
7 that aside. Employer's said it's effective. We don't
8 know if it is or not. Lots of evidence it's not. We
9 make no finding on that. Logically, there's no undue
10 hardship here as a matter of mere logic. Okay? This
11 is before getting into the facts in this case that
12 Ms. Abdo works alone, she's not around the public,
13 she's not around fellow employees, she's working in a
14 very large space. So, I mean, obviously, in this
15 individual case, she could be accommodated by her
16 employer. I -- I think that's obvious. But even as a
17 matter of logic, she should have and could have been
18 accommodated. Okay?

19 But, I mean, Ms. Abdo pointed it out. What's
20 really going on here -- let's go over to the
21 termination letter. This is GD3-25, second sentence:
22 (as read)

23 You will find that CBS would become a fully
24 vaccinated workplace, and failure to become
25 fully vaccinated will result in termination
26 of employment.

1 Like many employers, CBS is saying on paper, We're
2 going to accommodate you. We're going to follow along.
3 But what is it really doing? No. It is an
4 ideologically motivated 100 percent fully
5 COVID-vaccinated workforce, and it's going to achieve
6 that goal no matter what. Come what may. It's going
7 to do it. It's going to hit that. You can't read
8 that -- those phrases in the termination letter any
9 other way. "Fully vaccinated workplace." Failure to
10 comply, you're terminated. There's no mention of
11 accommodation, right? And we see from the denial of
12 accomodation that it was results oriented.
13 There's no lawful reasons here to deny her
14 accommodation. It's just excuses to come up -- to --
15 to -- to put something up on the wall as to why this --
16 this -- this decision that was already made was going
17 to happen.

18 Now, again, just -- just to clarify, the Amselem
19 test has been made out. The Amselem test is, look,
20 one, sincerity of belief. That's conceded. Nexus
21 with -- nexus with religion. Well, is there a nexus
22 for Christianity? I think I've made that quite clear.
23 There's a nexus with -- with -- with Christianity.
24 We've been talking about scripture, classic Christian
25 doctrines of conscience and -- and the temple being
26 the -- or the body being the Holy -- the temple of the

1 Holy Spirit. Okay. So we've established that. And
2 then, of course, I established earlier the third part
3 of the test, which is would this thing interfere with
4 the manifestation of practices of belief in a manner
5 that's more than trivial or insubstantial? If it
6 causes a sin, obviously, it does. The three-part
7 Amselem test is met. You will see that in the excerpt
8 from -- from Amselem that I sent you, but I think
9 that's really obvious in this case.

10 And you may be wondering why all of this is
11 relevant and why I'm bringing you down this road. And
12 it is relevant for the law of misconduct, and that's
13 what I'm going to get into next. You yourself
14 articulated the test. It's extremely well-known. It's
15 been around for decades. The test for misconduct is
16 whether the conduct is willful, and the employee ought
17 to -- ought to have reasonably known that the conduct
18 would likely result in dismissal. Now, of course, that
19 test is predicated on properly identifying the conduct,
20 which we'll have to get into. But that's the test,
21 willful and should the employee know that this was
22 going to get them fired.

23 We have all kinds of examples from the case law.
24 Okay? Some of them just (INDISCERNIBLE) from the
25 Federal Court -- Federal Court of Appeal and -- and the
26 Tribunal itself. Some common examples are employee

1 fraud, repeatedly showing up to work late, repeatedly
2 extending breaks, repeatedly missing work even when
3 it's due to an alcohol addiction, sexual harassment of
4 coworkers, insubordination. These things are pretty
5 obvious. This conduct cannot be defined -- it's one of
6 those funny things that when you see it, you know it.
7 It's decided on a case-by-case basis by the tribunals
8 and the courts, and, again, it's -- it's -- you know,
9 well, let's look at the -- let's look at it
10 case-by-case, and we can usually tell if it's
11 misconduct. Hard to define, but easy to identify.

12 Now, going back to that issue I mentioned that
13 it's not the Tribunal's role to decide if an employer's
14 actions are justified or if an employee policy is
15 reasonable, right? In other words, it's not the
16 Tribunal's job to act as a judge who decides the
17 wrongful dismissal suit, right, or, in this context,
18 to -- to play the role of arbitrator and decide if the
19 collective agreement's been breached and -- and, you
20 know, an employee should have been fired. It's not
21 their jurisdiction. A very narrow jurisdiction.
22 However, the appeal division of the Social Security
23 Tribunal has found that it is the role of the Tribunal
24 to determine if an employer's conduct or policies are
25 lawful or unlawful. It's a different thing than mere
26 reasonableness.

1 I'm going to take you to the case of N.E. -- of
2 course, with all these cases -- I'm sure you know this,
3 but with all these cases, the names are abbreviated to
4 initials, so they're a bit more difficult to identify.
5 But this is the case of N.E. versus the EI Commission.
6 The neutral citation is 2022 SST 732. I'm going to get
7 that case in front of me here. I apologize if --
8 not -- not the appeal division. It's the general
9 division. I do have an -- I do have an appeal division
10 case.

11 Okay. So here the case had to be sent back for
12 reconsideration. There was a summary dismissal. And
13 Social Security Tribunal -- and this is a decision, of
14 course, just from a few months ago -- says at
15 paragraph 32: (as read)

16 But there is a distinction between
17 reasonableness and lawfulness of a policy.
18 It may be that the reasonableness of an
19 employer's discretion -- or -- sorry --
20 direction or policy is irrelevant to the
21 misconduct analysis; however, that does
22 not -- to be -- appear to be the case where
23 the lawfulness of a policy is in question.

24 Going back down to paragraph 35: (as read)

25 If an employee must comply with a lawful
26 policy, [that's the law] conversely, it is an

1 employer's -- if an employer's policy is
2 unlawful, arguably an employee should not
3 have to comply with it. And if the employee
4 does not comply with a policy that is
5 unlawful, arguably, they're not committing
6 misconduct.

7 So much is obvious. Paragraph 36: (as read)

8 Despite the general division's determination
9 that it did not have the authority to decide
10 the legality of the employer's policy, I find
11 that the claimant raised an arguable case at
12 the general division that his employer's
13 policy was unlawful, and that if his
14 employer's policy was unlawful, his
15 non-compliance did not amount to misconduct.

16 Paragraph 37: (as read)

17 The general division has determined that it
18 did not have any authority to decide whether
19 the employer's vaccination policy was lawful,
20 but surely the general division would not
21 hesitate to consider whether an employee had
22 committed misconduct if the employer's policy
23 was obviously unlawful.

24 For instance, paragraph 38: (as read)

25 An employer's policy requiring employees to
26 work 24 hours consecutively without any

1 breaks would undoubtedly violate provincial
2 employment standards legislation. It is
3 inconceivable that the general division would
4 determine that it had no authority to decide
5 whether such a policy was lawful when it
6 clearly would not be and then accept that an
7 employer's non -- that an employee's
8 non-compliance with such a policy would
9 constitute misconduct.

10 Okay. And the tribunal member here is pointing out the
11 obvious: that you cannot blindly rubber stamp what an
12 employer does. If it's -- if it's -- if it's just
13 merely unreasonable, fine. If it's just merely lacking
14 justification, fine. But before we just uncritically
15 arrive at that conclusion, let's stop and ask if it was
16 lawful.

17 Now, of course, this is about whether or not a
18 COVID vaccination policy is unlawful, and it is. And
19 we're someday going to know that, right? We're someday
20 going to -- going to realize that the COVID vaccines
21 were like formaldehyde, and mandating it was unlawful.
22 The Supreme Court in New York has been willing to
23 acknowledge that in the last few days, and I'll look
24 forward to when Canadian courts do that, but we don't
25 have that yet, and that's okay. We don't need that.
26 This case is not about whether or not the policy is

1 unlawful. This case is about the unlawful denial of
2 accommodation. It's the unlawful discrimination.
3 Okay? The COVID vaccination policy, if it is to be
4 lawful, has to at least provide for accommodation, and
5 the enforcement of that policy, if it is to be lawful,
6 has to at least avoid discriminating against employees.
7 Discrimination is unlawful. I think that's trite.

8 So according to the general division -- this is
9 tribunal member Janet Lew. According to Janet Lew, you
10 have not only the jurisdiction and authority, but I
11 would say the obligation to consider whether or not the
12 employer has acted unlawfully; not merely unreasonably,
13 unlawfully. Obviously, from a policy perspective, this
14 makes sense. If an employer is acting unlawfully and
15 terminating employees and then employees couldn't get
16 EI benefits because the -- 'cause the commission just
17 says, Well, you know, it's not our job to decide
18 whether or not the employer does the right thing.
19 That's foolish. That's silly. That's not -- that's
20 not -- that's not (INDISCERNIBLE). And it certainly --

21 MR. EDWARDS: Um --

22 MR. KITCHEN: -- wasn't -- go ahead.

23 MR. EDWARDS: Oh, no. I was just jumping
24 in. It is an appeal division case you're -- you're
25 citing. It's not a general division case. Janet Lew
26 is an appeal division member. I just wanted to point

1 that out. It's not a big deal. Just --

2 MR. KITCHEN: I -- I should trust my --

3 MR. EDWARDS: Yeah. You were -- you should
4 have trusted your gut. You were -- you were right
5 initially. So I will --

6 MR. KITCHEN: And it -- it says "appeal
7 division". I'm still getting used to reading these --
8 these style of causes from the -- from the Social
9 Security Tribunal.

10 MR. EDWARDS: No problem at all. Yeah.
11 I --

12 MR. KITCHEN: Thank you.

13 MR. EDWARDS: Yeah. No problem. I'm going
14 to -- I'm going to mute myself again.

15 MR. KITCHEN: Right. And I don't think I
16 need to remind you, of course, that that -- that
17 decision is -- is -- because it's an appeal decision,
18 is binding on the general division.

19 So we need to ask ourselves a couple questions as
20 decision-makers often -- often do when they're going
21 through this analysis. What's -- what's the conduct,
22 and was it willful? And then, of course, we have to
23 get into, well, could the employer -- you know, would a
24 reasonable employee proceed if this was going to get
25 them dismissed? All right.

26 There's -- there's -- there's a case with the

1 Federal Court involving an employee who -- who sold
2 contraband cigarettes at his job. He was fired and
3 then denied EI benefits, and then the Court said, It's
4 reasonably perceivable that you're -- it's going to
5 lead to your dismissal if you do something like that.
6 Now, the employer could have been nicer. Could have --
7 could have -- didn't have to fire you. It's a bit of
8 an overreaction, but that's not our job to determine if
9 it's an overreaction. You sell -- you sell contraband
10 cigarettes on the job; you might get fired. That was
11 the conduct in that case, right?

12 So we got to look at what's the conduct in this
13 case. Now, of course, the employer and the EI
14 Commission says the conduct is not following the
15 employer's policy. The conduct is not getting
16 vaccinated when the employee says to -- when the
17 employer says to do so. That's not the conduct in
18 question. That's not the conduct that has to be
19 analyzed here. That's not what happened. Ms. Abdo
20 didn't simply disobey the policy. She didn't simply
21 say, I'm not getting vaccinated. That's not what
22 happened.

23 Rather, Ms. Abdo followed the policy. She
24 submitted a good-faith request for accommodation on the
25 basis of her religious beliefs, a meritorious request,
26 as you've seen in the written record, and as you've

1 heard her today, and as you've heard from me about --
2 about what the actual law is. Okay? And as you've
3 heard from me explaining Christianity, her request is
4 meritorious. It would be a sin for her to take the
5 vaccine. She's not making that up. Obviously, she's
6 sincere. Her tears were sincere. Her employer was
7 sincere. You know she's sincere. She's sincere when
8 she says, I can't put this in my body. It would be a
9 sin to do so. Okay? Her request is meritorious. It's
10 genuine. It's authentic. It's bona fide. It's
11 submitted in good faith. Okay?

12 So what was the reason she was fired? The reason
13 she was fired is 'cause she was denied accommodation.
14 The reason she was fired is 'cause her employer didn't
15 follow the law. The reason she was fired is because of
16 discrimination, right? We get this October 22nd letter
17 denying accommodation, and then we get the
18 November 16th letter saying, Hey, we didn't accommodate
19 you, so now you're being fired. That's critical for
20 understanding this analysis, right? In order -- in
21 order for the Social Security Tribunal to follow the
22 law and apply the law properly, they have to ask and
23 answer properly the question of, What was the conduct?

24 Now, I'm not making this up. Your -- I guess I'll
25 say your colleague Tribunal Member Gary Conrad engaged
26 in this very analysis in the case of D.L., neutral

1 citation 2022 SST 281. I'll take you to that decision.
2 Now, this was a case where, again, you have a Christian
3 employee who says, I can't take the shot because of my
4 religious beliefs. Employer has a policy that --
5 that at least gives lip service to accommodation on the
6 basis of religious beliefs. And Mr. Conrad says in
7 paragraph 29: (as read)

8 I find that the claimant followed the
9 employer's COVID vaccine policy by submitting
10 a request for a religious beliefs
11 accommodation, and thus failing to follow the
12 policy is not why she was fired.

13 Paragraph 31: (as read)

14 I find that she was fired because she was not
15 vaccinated and asked for a religious
16 exemption. The employer declined to
17 accommodate the claimant's religious beliefs.
18 I find it is clear the employer was planning
19 to deny the claimant's religious exemption
20 request and then dismiss her before the
21 claimant even submitted her religious
22 leader's letter.

23 I think the evidence was really clear in that case that
24 that was -- that was, in fact, the case. I think we
25 can infer that here too. I think everything you've
26 heard from Ms. Abdo and, I think, the documentary

1 evidence, I think you can infer. And given this was
2 circumstantial evidence on a balance of probabilities,
3 you can make a finding of fact that that's -- that's
4 what was going on here with Canadian Blood Services.
5 They already decided they were going to have a fully
6 vaccinated workforce and that they -- they weren't
7 going to grant any accommodations. The lack of reasons
8 for why they denied her except for the unlawful and
9 silly one about personal beliefs gives -- gives
10 credence to that. They had already decided they were
11 going to deny her. There was just the matter of how
12 they were going to do it. So this case is directly on
13 point. That's how I think you need to look at this.
14 'Cause you need to say, you know, what's -- what's the
15 conduct? Is the conduct merely not following the
16 policy by getting vaccinated, or is it by not following
17 the policy and requesting religious exemption, and then
18 the conduct in question is actually requesting the
19 religious exemption?

20 So then let's go back to the willfulness. We've
21 identified the proper conduct here. Let's go back to
22 the willfulness. In the case of D.L., 2022 SST 281,
23 and Z.Z., 2022 SST 597, these cases, again, both
24 involve Christian claimants asking for religious
25 accommodation and not getting it and then asking for EI
26 benefits when they were ultimately terminated or put on

1 paid leave; the EI benefits were denied.

2 At paragraph 32 of Z.Z., a tribunal member,
3 Losier, found that the claimant in that case did not
4 willfully breach her employer's COVID vaccination
5 policy because she followed the policy by submitting a
6 bona fide meritorious request for accommodation on the
7 basis of her religious beliefs. Okay? Same thing in
8 this case. Ms. Abdo didn't willfully not follow the
9 policy. In fact, she willfully did 'cause she
10 willfully provided a meritorious request for religious
11 accommodation, and then she very reasonably so expected
12 her employer to follow the law. She's the one that
13 followed the policy. She did exactly what the policy
14 said. The policy implicitly invited, as it must do
15 according to the law, requests for accommodation on the
16 basis of religious grounds or medical grounds, which is
17 really just a synonym for physical and mental
18 disability which are other protected grounds in the
19 Human Rights Act. So she followed the policy. She did
20 that. Who didn't follow the policy? The employer.

21 Now, again, if this is a matter of mere
22 reasonability for justification, fine. Not the
23 Tribunal's thing to worry about. But in this case, not
24 following that policy is unlawful because that policy,
25 in order to be lawful, has to provide for
26 accommodation. So if the employer does not follow the

1 policy and does not accommodate, they're not really
2 acting reasonably. They're acting unlawfully. They're
3 engaging in unlawful discrimination on the basis of a
4 protected characteristic, i.e., religious beliefs. So
5 Ms. Abdo did not willfully not follow the policy. She
6 willfully followed it by putting in her exemption
7 request, her meritorious one.

8 So that right there is the end of the analysis.
9 If the conduct isn't willful, it's not misconduct. But
10 there's two steps to the analysis. You may find
11 Ms. Abdo's conduct was willful. But, regardless, if we
12 properly characterize what the conduct is in this case,
13 okay, this is not a case of an employee who just says,
14 I don't want to take the shot. It's going to endanger
15 my privacy. It's dangerous. We have lots of those
16 cases. You -- you have lots of those cases at -- at
17 the Tribunal in front of you. I was counsel on a case
18 just like that. That's not this case. This case is
19 (INDISCERNIBLE) me -- want to take it, I can, because
20 of what I believe. Okay? So does an employee
21 reasonably foresee -- (INDISCERNIBLE) reasonably to
22 foresee that asking for religious accommodation is
23 going to result in a dismissal? Of course not. Did
24 they reasonably foresee that their employer is going to
25 break the law? No. Did they reasonably foresee
26 they're going to be discriminated against? No. Did

1 they reasonably foresee that when they are invited to
2 put in a meritorious request for religious
3 accommodation that they're going to be denied out of
4 hand without anyone checking their reasons? No. No
5 employee ever foresees that their employer is going to
6 act unlawfully and terminate them. That is not the
7 law; it cannot be the law. The Tribunal has never said
8 it is the law. They're never going to say it is the
9 law. Or if they do, the Federal Court is going to
10 overturn them, which we may yet see with some of these
11 vaccine decisions coming out of the Tribunal.

12 And on that point, I recognize that there is a lot
13 of decisions from your colleagues that you could point
14 to say misconduct's made out here. Most of these
15 decisions from the Tribunal have gone against
16 claimants, Christian or otherwise, who haven't taken
17 the shot. I recognize that. I recognize them asking
18 you to break from your colleagues. But there are no
19 binding appeal decisions that are preventing you from
20 following the law, and this is a new area of the law.
21 So for you to disagree with your colleagues is actually
22 entirely expected. The reason we have appellate courts
23 and the Supreme Court of Canada is because trial-level
24 judges disagree with each other. Reasonable people
25 disagree on what's reasonable. So we have to go over
26 to the Court of Appeal. That's why we have the appeal

1 decision here, the Federal Court, the Federal Court of
2 Appeal. We've got -- we've already had three levels;
3 we're going to have four more levels if we go all the
4 way to the Supreme Court of Canada, which a couple
5 of these cases have in the last few decades.

6 So you may be disagreeing with some of your
7 colleagues, but you'll be agreeing with at least a
8 couple of them. I think the analysis from Losier and
9 Conrad is the correct one. If an employee is
10 terminated because they were unlawfully discriminated
11 against on the basis of their protected Christian
12 beliefs, they didn't commit misconduct, and they're
13 entitled to their benefits.

14 Just to give you another example of how to look at
15 this issue of what the conduct is, at paragraph 8 of
16 the case D.N., 2022 SST 355 -- this is an interesting
17 (INDISCERNIBLE) on this case. The -- the claimant in
18 that case was -- was terminated because they said --
19 before their employer's COVID vaccination policy was in
20 effect, they said, I'm not going to follow it. The
21 employer responded by terminating. When the Tribunal
22 said, Well, hold on now. The reason you were
23 terminated is not because you didn't follow the policy.
24 The policy didn't exist yet. It wasn't enforced yet.
25 The real reason he was fired is because he said he
26 wasn't going to follow the policy. Well, that's --

1 that's not misconduct. If he didn't follow the policy,
2 potentially misconduct. But saying he won't, merely
3 saying he won't, that's not misconduct. The employer's
4 saying he was fired for cause. Fine. And that may be
5 unreasonable. We don't care about that. It's -- that
6 was actually unlawful. And that's -- that's -- he
7 wasn't fired for that reason. He was fired because he
8 said he wasn't going to follow it, right? That was --
9 that was Tribunal Member Paul Dusome at paragraph 8 of
10 that case.

11 So, again, we need to be very careful about
12 identifying the proper conduct in order to apply the
13 proper analysis. You see, in the EI Commission's
14 submissions -- I mean, it's a carbon copy of a lot of
15 their other submissions, but they skim right over this
16 fact. They just immediately jump into citing some --
17 some Federal Court of Appeal cases about, you know,
18 what misconduct is and -- and how, you know, anybody
19 who doesn't follow their COVID vaccination policy
20 engaged in misconduct. They completely skip over the
21 fact that -- what's the actual conduct? Is the conduct
22 not following the policy, or is the conduct requesting
23 religious accommodation? And so all the rest of their
24 submissions completely misses the point. (as read)

25 In this case, the employer acted unlawfully
26 by refusing accommodation and then proceeding

1 to fire the claimant on the basis of that
2 refusal.

3 Okay. Now, obviously, they're saying -- they're
4 characterizing it in the November 16th letter, Okay.
5 You didn't follow the policy. You didn't get
6 vaccinated. But we need to actually look at the
7 evidence and the law from a propulsive and holistic
8 perspective and say, Well, what was really the reason?
9 But for the denial or the refusal to accommodate, she
10 wouldn't have been fired. But for the employer's
11 decision to not accommodate, but for the employer's
12 discrimination, but for the employer's refusal to
13 follow the law, would Ms. Abdo have been fired? No.
14 She would have been accommodated. Well, that would
15 have been something other than firing. Maybe she would
16 have been at work; maybe she wouldn't. Maybe she would
17 have been paid; maybe she would have been not paid.
18 Whatever. But if she had been accommodated, she
19 wouldn't have been dismissed for cause. But for the
20 unlawful denial of accommodation on the part of the
21 employer, we wouldn't have had the dismissal. So as a
22 matter of logic, the conduct in question is not a
23 refusal to follow the policy. It's the fact that she
24 applied for religious accommodation, and the employer
25 didn't grant it.

26 Well, subject to any questions you have, and I

1 invite them, I'll conclude simply by saying that the EI
2 Commission has failed to make out misconduct in this
3 case. Ms. Abdo is entitled to receive the EI benefits
4 to her. She did not engage in misconduct. She did not
5 lose her job as a result of her own misconduct. She
6 did not willfully do anything that she could have
7 reasonably foresaw was a breach of an express or
8 implied term of employment.

9 And those are my submissions subject to any
10 questions you have.

11 MR. EDWARDS: Great. Thank you very much,
12 Mr. Kitchen.

13 And I do not have any questions. The only thing I
14 was going to -- I would have brought up, but you
15 already did, which is great, is that as -- as you
16 pointed out, I don't really have the authority to look
17 at the fairness or the reasonableness of the employer's
18 policy, but I will take everything you said about the
19 unlawfulness of the policy into account when I make my
20 decision. So I would have brought that up if you'd
21 gone down that road in terms of talking about fairness
22 and reasonableness of the policy itself 'cause, yeah,
23 that's not something that my jurisdiction allows for,
24 but in terms of the unlawfulness, I will -- I will
25 certainly be addressing that in my decision and
26 considering what you've told me today. So, again,

1 thank you for your submissions.

2 And at this point, then, I'll -- I'll just bring
3 the hearing to a close. And before I do that, though,
4 I'll just explain next steps.

5 And so the next step is really that I'll be
6 working on a decision for you, Ms. Abdo, and so I'm not
7 going to be giving you a decision today. I'm going to
8 be instead giving -- giving one to you in writing, and
9 so that decision's going to say whether or not I agree
10 with you, and it's going to give reasons for my
11 decision. And so you're going to be emailed that
12 decision when it's done, and I'm hoping to get it to
13 you within the next two to three weeks barring
14 unforeseen circumstances, but that's generally the time
15 line that we're working with right now, and so that's
16 when you can expect to -- to -- to get that from me.

17 So did you have -- did either of you have any
18 questions about -- about that before -- before we end
19 things today?

20 A I have no question about that, but I have two things
21 that came to me when -- when he was talking about --
22 two things that came to me, if I could. It's a comment
23 more than a question. Is that okay?

24 MR. EDWARDS: Oh, sure. Does this relate to
25 what I was just talking about, or --

26 A No.

1 MR. EDWARDS: -- relate more to -- it
2 relates back to the --

3 A Yeah.

4 MR. EDWARDS: Sure. Yeah. If you wanted to
5 add anything at this point, that's fine, and then
6 we'll -- we'll close things up. So, yeah, you go right
7 ahead.

8 A One of them is actually how I have followed not only
9 the policies they have saved, and I have also
10 followed -- they have asked me to be tested. I
11 have been -- willingly been tested. They have --
12 whatever they put -- the thing they have put,
13 everything to the 'T', I have followed them all. Being
14 tested, being masked, being -- do this and do that,
15 everything I have done, just so you know. I have never
16 said no to anything they have put forward, be it COVID
17 testing, masking, whatever else they have put. I have
18 said yes, all their policies, just so you know.

19 Second, I remember -- with her, I talked to her,
20 and she would agree, and then she goes -- gathers with
21 her bunch of lawyers and come back to me with these
22 kind of answers. When I talked to that person who
23 asked me, she's truly convinced, and then after two
24 weeks or whatever, she comes and apologizes, and
25 that's -- there's some gap happening, just so -- this
26 is my representation.

1 Third, I remember, like, my workplace -- my --
2 this is, like, the manager position, regional manager
3 and the highest people, they would say, How -- why does
4 it feel like it's only -- who care in this place? They
5 used to say that to me. I actually gave them the
6 answer. Finally, one of -- in this case I told her,
7 you know, you say -- it looks like only you -- it's
8 only you who cared in this -- in this workplace, and I
9 told them it's because it's not only for Canadian Blood
10 Services I work. The word of God says do all things
11 you do as if you do it through me. So I told them it's
12 because the work I do, I'm not only accountable to you,
13 I'm accountable to my God. That's why, whatever I do,
14 they can see the care I put in. I will never leave my
15 work. I don't care if it took me an hour overtime. I
16 don't clock out. And whenever I do -- they want things
17 to be done, they give it to me because I know that if I
18 am busy, I'll get it done. They used to say they never
19 understood why. I couldn't answer them then when they
20 asked me. But during this time, I told her, the
21 regional manager, You ask me why, right? This is why.
22 This is because I don't work only for you; I work for
23 God. Which the word of God says, do everything you do
24 as if you do it to you. That is why you see the
25 difference, I told her. I just wanted to put that out
26 there.

1 MR. EDWARDS: Sure.

2 (PORTION OF AUDIO OMITTED BY REQUEST)

3 (AUDIO ENDS)

4 _____

5 CERTIFICATE OF TRANSCRIPT:

6

7 I, Derek Lopez, certify that the foregoing pages
8 are a complete and accurate transcript of the audio
9 recording taken down by me in shorthand and transcribed
10 from my shorthand notes to the best of my skill and
11 ability.

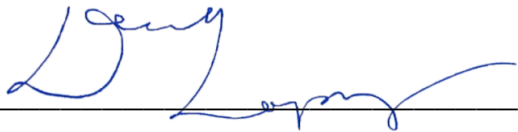
12 Dated at the City of Edmonton, Province of
13 Alberta, this 18th day of July 2023.

14

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16

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18 Derek Lopez, RPR, CSR(A)

19 Official Court Reporter

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